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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

AMERICAN REFINING AND
BIOCHEMICAL, INC., a Pennsylvania
corporation,

Plaintiff,

vs.

CYCLE POWER PARTNERS, LLC,
a Delaware limited liability company,

Defendants

CASE NO. 3:20-cv-00208-YY

DECLARATION OF KENNETH P.
CHILDS IN SUPPORT OF MOTION FOR
ENTRY OF DEFAULT JUDGMENT

I, Kenneth P. Childs, declare as follows:

1. I am the attorney for plaintiff, American Refining and Biochemical, Inc., in connection with the above-captioned lawsuit. Defendant failed to appear within the time allowed by law and a default was entered by the court clerk on March 9, 2020.

2. This lawsuit arises out of a settlement agreement that was entered to resolve disputes that arose out of the sale of a business. The parties written Settlement Agreement and General Release (the "Settlement Agreement") was relatively simple. It called for defendant to pay plaintiff \$105,000 by a date certain and to execute a Promissory Note (the "Note") for that

amount, and it contained broad mutual releases of all claims. The only performance called for by the Settlement Agreement was defendant's obligation to pay plaintiff. It did not require any performance by plaintiff. (Copies of the Settlement Agreement and Note are attached as Exhibits A and B.)

3. Prior to filing this lawsuit, plaintiff's general counsel, Richard Smith, sent a demand letter to defendant dated November 18, 2019, and received in response a letter dated January 10, 2020, from defendant asserting various potential claims arising out of the original sale of the business; however those claims were all released in the Settlement Agreement. (A copy of defendant's 1/10/20 letter is attached as Exhibit C.)

4. Since this lawsuit was filed, neither I nor my client have received any communication from defendant or from anyone representing defendant.

5. Plaintiff is a Pennsylvania corporation and its principal place of business is Pennsylvania. Attached as Exhibit D is a copy of the confirmation from the Pennsylvania Secretary of State's office showing that plaintiff is a Pennsylvania corporation.

6. Defendant is a Delaware limited liability company and its principal place of business is in Oregon. Attached as Exhibit E is a copy of the confirmation from the Delaware Secretary of State's office showing that defendant is a Delaware limited liability company. Attached as Exhibit F is a copy of the confirmation from the Oregon Secretary of State's office showing that defendant is a Delaware limited liability company with its principal place of business in Oregon.

7. As of March 10, 2020, pre-judgment interest on the principal balance due from defendant totaled \$57,786.48, and interest accrues thereafter at the per diem rate of \$34.52.

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**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT.**

EXECUTED ON March 11, 2020.

/s/ Kenneth P. Childs
Kenneth P. Childs, OSB No. 831690